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May 29, 2007

Joseph D. Murphy
Meyer Capel
306 West Church Street
Champaign, IL 61820

Re: Dispute of Reciprocal Compensation Invoices

Dear Mr. Murphy,

On behalf of BitWise Communications, Inc. ("BitWise"), I hereby reassert the demand for immediate payment of the reciprocal compensation invoices disputed by your client, Gallatin River Communications, LLC ("Gallatin"). After reviewing your letter, I find your client's legal position to be wholly-unfounded and contrary to both the plain language of the Parties' Interconnection Agreement ("ICA") and the terms that were specifically negotiated.

BitWise is correctly and timely billing for reciprocal compensation under the terms of the "new" ICA, filed with the Illinois Commerce Commission ("ICC") on October 6, 2006; approved December 20, 2006. Nothing in the ICA supports your client's position that ISP traffic below the 3:1 ratio is to be excluded from reciprocal compensation. Additionally, contrary to your explanation, BitWise is entitled to demand reciprocal compensation at any point after the ICC's approval of the ICA.

First and foremost, absolutely nothing in the ICA excludes ISP traffic from reciprocal compensation. The language you cite in support of such a proposition is erroneous and does not accurately reflect the language in the new ICA. The actual text of Section 5.1 of the Interconnection Attachment (page 34), taken directly from the October 3, 2006 ICA found at the ICC's website (Docket 06-0676)¹ is as follows:

Reciprocal Compensation: The Parties reserve the right to apply the Reciprocal Compensation Transport and Termination Usage Rate ("Usage Rate") of \$0.015 per Minute of Use in the event that A) a Party terminates 200,000 or more minutes per

¹ http://www.icc.illinois.gov/e-docket/reports/view_file.asp?intIdFile=183734&strC=bd

month of wire-line local traffic originated by the other Party for a period of three (3) consecutive months, and B) the representative proportion of total wire-line local traffic exchanged between the Parties exceeds 60:40 ratio. When such threshold is met, either Party may provide the other Party a written request, along with verifiable traffic information supporting such request, to establish the application of the Usage Rate. Notwithstanding the language above, neither party shall compensate each other for any traffic above the 3:1 ratio (the Rebuttable Presumption). For purposes of clarity, all traffic above the 3:1 ratio shall be exchanged on a bill and keep basis.

If you are having difficulty discerning the difference between this passage (taken from the ICA that controls the parties' relationship for the relevant billing period) and the provision quoted in your letter, absent from the relevant provision is any indication that ISP traffic will be treated any differently than other traffic. Absent from the relevant provision is any discussion that compensation will not be paid on ISP Traffic. Furthermore, the relevant provision does not differentiate between ISP and other local traffic. Other similar definitions within the ICA also do not exclude ISP Traffic, such as the statement in Attachment A-5.

Secondly, other quotes from the relevant ICA in your letter are missing key sections that support the fact that ISP Traffic below the 3:1 ratio is billable (and not "bill and keep."). Section 2.32, again taken directly from the relevant ICA, states the following:

Neither party shall compensate the other for ISP Traffic in excess of 3:1 ratio as set forth in Core Forbearance Order.

I am sure you recognize that this language is remarkably different from the language selectively quoted in your letter. Section 2.32 does not indicate that all ISP traffic should not be billed; it merely supports the understanding reached between the parties that traffic over the 3:1 ratio would be made on a bill-and-keep basis. Consistent with the parties' intent, by indicating that ISP traffic above the 3:1 ratio was non-compensable, ipse dixit, the parties intended for ISP traffic under the 3:1 ratio to be billable.

Section 2.49 of the ICA also makes this same distinction. Under the definition of Reciprocal Compensation, this section excludes:

(1) any Internet Traffic (ISP), above the 3:1 ratio as established in Core Forbearance Order;

Similar to the logic employed above, by excluding traffic above the 3:1 ratio, the parties intended the ICA to include all ISP Traffic below the 3:1 ratio and to include such traffic as billable according to specific rate provisions elsewhere in the ICA.

Section 2.27 acknowledges the FCC ISP Order, which is where the 3:1 ratio and the \$0.0007 rate originated. Most importantly, it was in the FCC ISP Order that the Commission recognized ISP Traffic was, indeed, subject to reciprocal compensation. Section 2.48 defines Reciprocal Compensation as "the arrangement for recovering, in accordance with Section 251 (b)(5) of the Act, the FCC Internet Order, and other applicable FCC orders and FCC Regulations...." The FCC's Internet Order referenced here indicates that ISP Traffic is eligible for reciprocal compensation.

And finally, during the ICA negotiations, both parties expressly agreed that reciprocal compensation must include ISP Traffic. This was an issue that was debated widely at the time and, in conclusion, the parties reached a meeting of the mind – said meeting was incorporated into the

ICA. If there is any doubt whatsoever, the following email from Stephen Murray clearly expresses your client's true intent:

From: Stephen Murray [mailto:murrays@madisonriver.net]
Sent: Monday, October 02, 2006 1:33 PM
To: 'jsm@thlglaw.com'; 'Michael Shuler'
Subject: Recip Comp and ISP compensation: clarification...

Gentlemen, as a follow up to Friday's communications; after some thought and discussion with Mike, I agree that the recip comp language in the ICA, with respect to ISP traffic, could be misinterpreted. So, we can either alter the ICA language or we can use this message, below, as a *clarifying memo*.

Specific to the BitWise ICA, there is the Reciprocal compensation section which specifies a "threshold" to be made upon which compensation for Recip Comp commences. It is GRC's intent that compensation should be for ALL traffic up to the 3:1 level (the Rebuttable Presumption"), after which the Parties will not compensate each other for any traffic. **The way the section is written, it could be interpreted that any ISP traffic below the 3:1 ratio would not be compensated and that is not GRC's intent...** (emphasis added and copy of e-mail attached).

End of story. End of any contrived dispute your client fabricated to excuse its refusal to compensate for ISP Traffic below the 3:1 ratio. It was, without question, Gallatin's "intent" that BitWise receive remuneration for ISP Traffic below the 3:1 ratio. This intent was memorialized in the ICA, filed with and approved by the ICC. This intent is further bolstered by the above e-mail, which your client suggests may be used as a "clarifying memo." There is no need to go beyond the four corners of the ICA to resolve this matter, but if your client persists, there's enough rope here for Gallatin to hang itself.

I also want to take this opportunity to clarify another misstatement of fact in your letter. Contrary to your suggestion, BitWise's demand for reciprocal compensation is made pursuant to the rights that were negotiated into and are afforded by the parties' ICA. It is not in any way, shape or form a response to the ongoing billing disputes between Gallatin and BitWise. Just as your client would be entitled to timely payment for services rendered and properly invoiced, so too is BitWise. Your client's dispute rings hollow and is nothing more than a cheap trick intended to maximize its Accounts Receivable in support of what can only be described as a calculated effort to shut off services to BitWise and cause irreparable harm to its reputation in the marketplace.

BitWise is confident that the response above more than adequately supports BitWise's request for reciprocal compensation on *all* traffic (whether ISP, non-ISP and even foot traffic) below the 3:1 ratio. BitWise has even furnished Gallatin with information necessary to verify traffic pursuant to the ICA. Accordingly, BitWise expects Gallatin to adhere to the terms of the ICA and render payment. Failure to make timely payment will result in imposition of late fees and interest.

I look forward to your client's prompt resolution of this matter. Should your client continue to refuse payment based on contrived and illegitimate arguments, we will not hesitate to raise this matter in a complaint proceeding before the ICC.

Respectfully,

/s/

Jonathan Marshlian

Via e-mail

Cc: Jim Zolnierak
Stefanie Glover